

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

MICHAEL LYNN KIRK (13)

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Case No. 4:03cr84
(Judge Schell)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on November 5, 2009, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Maureen Smith.

On March 12, 2004, Defendant was sentenced by the Honorable Richard A. Schell to forty-six (46) months' custody followed by four (4) years of supervised release for the offense of Conspiracy to Manufacture, Distribute or Possess with Intent to Manufacture, Distribute or Dispense Methamphetamine. On March 7, 2008, Defendant completed his period of imprisonment and began service of his supervised term.

On October 14, 2009, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following mandatory conditions: (1) the defendant shall not commit another federal, state, or local crime; and (2) the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer. The petition also alleged violations of the following standard conditions: (1) the defendant shall notify the probation officer within seventy-two hours

of being arrested or questioned by a law enforcement officer; (2) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) the defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month; (4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer; and (5) the defendant shall notify the probation officer ten days prior to any change of residence or employment. The petition alleges violation of the following special condition: the defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following acts: (1) On June 15, 2009, defendant was stopped by the Gainesville, Texas, Police Department and issued citations for expired motor vehicle inspection sticker and failure to maintain vehicle insurance. The defendant failed to appear for Municipal Court and warrants were issued on July 23, 2009. The defendant was arrested by the Gainesville, Texas, Police Department on the outstanding warrants on August 30, 2009. The Defendant remained in custody and received credit for time served until his release on September 4, 2009. The defendant failed to notify the probation officer of his arrest or questioning by law enforcement within 72 hours of his release; (2) On July 23, 2009, the defendant submitted a urine specimen which tested positive for methamphetamine; (3) the defendant failed to appear for a random urine drug test at Keith Lang's, Sherman, Texas on June 19, 2008. The defendant failed to appear for a random urine drug test at C.J. McCary's in Denton, Texas, on September 4, 8, 10, 16, and 28, 2009. On August 7, 2009, the defendant was referred to substance abuse counseling with

C.J. McCary, Denton, Texas. The defendant failed to attend group counseling on September 9, 15, 22, and 29, 2009. The defendant was unsuccessfully discharged from the program on October 5, 2009; (4) On September 16, 2009, the defendant was mailed a letter instructing him to report at 10:15 a.m. on September 23, 2009. The defendant failed to report. The defendant failed to submit a written report for the months of June 2009 and September 2009; and (5) On September 11, 2009, a home visit was conducted. The defendant's mother advised that several days prior to this visit, the defendant stated he was going to stay with his sister. He has not returned nor is he living at his sister's residence. The defendant's whereabouts were unknown at the time of the filing of the petition.

Prior to the Government putting on its case, Defendant entered a plea of true to all of the violations. The Court recommends that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. The Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eleven (11) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons, Seagoville Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 5th day of November, 2009.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE